



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

SOUTH CENTRAL REGIONAL OFFICE  
7705 Timberlake Road, Lynchburg, Virginia 24502  
(434) 582-5120 Fax (434) 582-5125  
www.deq.virginia.gov

Robert G. Burnley  
Director

Thomas L. Henderson  
Regional Director

### WASTE MANAGEMENT BOARD ENFORCEMENT ACTION

#### ORDER BY CONSENT ISSUED TO Danville VA Property, LLC – Danville Facility

##### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1185 and 10.1-1455.C between the Waste Management Board and Danville VA Property, LLC for the purpose of addressing an unpermitted landfill at the Danville Facility.

##### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Danville Property" means Danville VA Property, LLC a limited liability company certified to do business in Virginia.

7. “Danville Facility” or “Facility” means the property of approximately 145 acres owned by Danville VA Property, LLC in Danville, Virginia, as identified and described at page 603 of Deed Book 564, page 370 of Deed Book 474, page 21 of Deed Book 468, and page 172 of Deed Book 464 in the Circuit Court Clerk’s Office of Pittsylvania County, Virginia.
8. “VSWMR” or “Regulations” means the Virginia Solid Waste Management Regulations, 9 Virginia Administrative Code (“VAC”) 20-80-12 *et seq.*

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. In the third quarter of 2004, Danville Property purchased the Facility from Masonite Corporation (hereinafter “Masonite”). Masonite has owned and operated the Facility from approximately 1967. During that time an area at the Facility was used to dispose of wood ash; this landfill disposal area was never permitted under the Regulations.
2. In 1998, Masonite entered into a Consent Order (hereinafter “1998 Order”) with the Board and the DEQ for the unpermitted disposal of solid waste at the Facility. The 1998 Order required Masonite to close and conduct post-closure care of the unpermitted landfill at the Facility in accordance with the Regulations. The unpermitted landfill at the Facility is closed and post-closure care is being conducted by Masonite.
3. By purchase of the Facility, and by its signature of consent to this Order, Danville Property assumes the responsibility to manage the unpermitted landfill at the Facility in accordance with the Regulations and pursuant to this Order.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted in Va. Code §10.1-1455.C orders Danville Property, and Danville Property consents, to perform the actions contained in Appendix A of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Danville Property, for good cause shown by Danville Property, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves the matters specifically identified herein. This Order shall not preclude the Board, or the Director, from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce this Order. This

Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

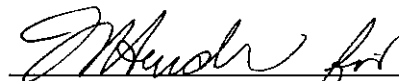
3. For purposes of this Order and subsequent actions with respect to this Order, Danville Property agrees to the jurisdictional allegations contained herein. This Order is made by agreement and with the consent of the parties and does not constitute an admission of violation of any federal, state, or local law, regulation, or rule. This Order was negotiated and executed by the parties in good faith to avoid delays in concluding this project.
4. Danville Property consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Danville Property declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the Waste Management Act and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Danville Property to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Upon execution of this Order Danville Property shall be responsible for failure to comply with any of the terms and conditions herein after the date hereof unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Danville Property shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Danville Property shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director, or his designee, and Danville Property.
- 11. This Order shall continue in effect until:
  - a. Danville Property petitions the Director, or his designee, to terminate the Order after it has completed all requirements of the Order. The Director's determination that Danville Property has satisfied all the requirements of the Order is a "case decision" within the meaning of the Virginia Administration Process Act; or
  - b. The Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to Danville Property.
- 12. By its signature below, Danville Property consents to the issuance of this Order.

And it is so ORDERED this 2nd day of November, 2005.



Robert G. Burnley, Director  
Department of Environmental Quality

Danville Property consents to the issuance of this Order.

By:  \_\_\_\_\_

Date: 9/1/2005

Commonwealth of Virginia

City/County of Cook

The foregoing document was signed and acknowledged before me this 1<sup>st</sup> day of September, 2005, by Jeffrey S. Hughart, who is the of Danville Property.

Lisa Rogers  
Notary Public

My commission expires: 7/12/08



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**APPENDIX A**

1. Danville Property shall establish and maintain financial assurance for the unpermitted landfill at the Facility pursuant to 9 VAC 20-70-10 *et seq.*
2. Danville Property shall conduct post-closure care of the unpermitted landfill at the Facility in accordance with the Regulations and the DEQ approved closure plan, which includes, but is not limited to, post-closure activities, groundwater monitoring, and gas monitoring.
3. The approved closure plan, dated June 1, 1998, prepared by Environmental Consultants, Inc. and certified by R. Dean Stone, PE, is hereby incorporated by reference into this Order and shall be enforceable under the terms herein. Any amendments or modifications to the closure plan shall be approved by DEQ and shall also become a part of this Order and enforceable under the terms herein.